

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gerald J. Richards
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case No: 13R 201

Decision and Order Reversing
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property (Subject Property) is a residential parcel located at 5154 Ventura Drive, Fremont, Dodge County, Nebraska. The legal description is contained in the Case File.
2. The Dodge County Assessor (the Assessor) assessed the Subject Property at \$341,510 for tax year 2013.
3. The Taxpayer protested this value to the Dodge County Board of Equalization (the County Board) and requested an assessed value of \$300,000 for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was 366,000 for tax year 2013.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 3, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Thomas D. Freimuth.
7. Gerald J. Richards was present at the hearing for (Taxpayer).
8. Timothy E. Sopinski, Deputy Dodge County Attorney, was present for the County Board. Brittny King, the Dodge County Assessor, was also present at the hearing.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record Card (PRC) for the Subject Property at the hearing before the Commission indicates that the County Board’s \$366,000 determination for tax year 2013 includes \$128,225 for land and \$237,775 for the improvement components.
10. The PRC’s sales history indicates that the Taxpayer purchased the Subject Property for \$366,000 in June of 2012.
11. The PRC’s property valuation history indicates that the Subject Property was valued at \$306,285 (\$125,000 land and \$181,285 improvements) for tax years 2012 and 2011, and the assessed value was increased by the County Board for tax year 2013.

12. The Taxpayer asserted that the County Board overvalued the Subject Property, failed to equalize the Subject Property with other similarly situated properties and that the value of the Subject Property included the value of personal property.
13. The Taxpayer asserted that the \$366,000 purchase price of the Subject Property in June of 2012 included \$13,000 of personal property consisting of a dock, boat ramp and boat lift.
14. The Taxpayer provided PRCs for three alleged comparable properties.
15. The Assessor stated that she adjusted the assessed values of all properties located at Lake Ventura by 11% pursuant to a Statewide Equalization Order for tax year 2103, and that 102 out of 109 properties located at Lake Ventura protested their assessed values to the County Board. The Assessor further indicated that her office inspected all Lake Ventura properties and determined that a 3% adjustment to assessed values of property in Lake Ventura was more appropriate than an 11% adjustment and recommended a lesser assessed value to the County Board at the protest hearing.
16. The property valuation protest documents and the statements of the Assessor indicate that her opinion of value for the subject property for tax year 2013 is \$314,190.
17. The Assessor also indicated that she did not believe that the \$366,000 assessed value determination of the County Board was unreasonable or arbitrary.
18. The Assessor indicated that if a property located at Lake Ventura protested its assessed value to the County Board, the County Board looked at recent sale information if available.

STANDARD OF REVIEW

19. The Commission's review of the determination of the County Board of Equalization is de novo.¹ "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."²
20. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."³ That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

21. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
22. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
23. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁷

GENERAL VALUATION LAW

24. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸
25. “Actual value, market value, and fair market value mean exactly the same thing.”⁹
26. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.¹⁰
27. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹¹
28. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹²
29. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

⁸ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹³

VALUATION ANALYSIS

30. The Taxpayer presented the PRCs for three alleged comparable properties.
31. The Taxpayer purchased the Subject Property in June of 2012, six months prior to the January 1, 2013, assessment date for \$366,000. The Taxpayer asserted that his purchase of the Subject Property included \$13,000 in personal property. The Taxpayer presented the sales contract for the subject property and other evidence and testimony to support his position that the value of the personal property included with the purchase of the Subject Property was \$13,000.
32. The PRCs indicate that the County Assessor utilized the cost approach to determine her opinion of value for the Subject Property. The reliability of the Assessor cost approach is limited in the case of residential properties such as the Subject Property.¹⁴
33. In *County of Lancaster v. Union Bank & Trust Co.* (In re Estate of Craven), the Court upheld a ruling issued by the Lancaster County Court that the \$113,000 purchase price of property sold at an estate auction in a weak real estate market after the decedent's death in 2008 stemmed from an arm's length transaction and was the best evidence of value for inheritance tax purposes.¹⁵
34. I am mindful that the Nebraska Court of Appeals has stated that "[s]ale price is not synonymous with actual value or fair market value."¹⁶ I also note, however, that the Nebraska Supreme Court stated as follows in *Potts v. Board of Equalization of Hamilton County*: "where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration."¹⁷
35. The evidence and testimony indicates that the County Board relied heavily on the purchase price of the Subject Property in June of 2012, but that the County Board did not consider the impact of the inclusion of a significant amount of personal property in the purchase had on the allocation of the purchase price to the real property located on the Subject Property.
36. Based on the documents and statements reviewed in this case, together with the Nebraska Supreme Court's holdings in *Potts* and *In re Estate of Craven*, I find that the \$366,000 sale of the Subject Property in June of 2012, less \$13,000 for personal property associated with the purchase of the real property, or \$353,000 is a powerful indicator of

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹⁴ *Appraising Residential Properties*, 4th Edition, Appraisal Institute, 2007, at p. 260.

¹⁵ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

¹⁶ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998).

¹⁷ *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

- actual market value for that property and the Subject Property for tax year 2013 and is the best evidence of value for purposes of assessing the actual value of the Subject Property.
37. The failure of the County Board to account for the impact of the inclusion of \$13,000 of personal property in the sale price of the Subject Property is unreasonable and arbitrary.
 38. For all of the reasons discussed above, the Commission finds that the actual value of the Subject Property for tax year 2013 is \$353,000.

GENERAL EQUALIZATION LAW

1. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁰
2. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.²¹
3. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²² Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.²³
4. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁴ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”²⁵ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁶
5. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”²⁷

¹⁸ *Neb. Const.*, Art. VIII, §1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁶ *Id.* at 673, 94 N.W.2d at 50.

²⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

EQUALIZATION ANALYSIS

6. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;²⁸ or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value.²⁹
7. For equalization analysis purposes, the Taxpayer submitted PRCs for three alleged comparable parcels.
8. A review of the PRCs submitted by the Taxpayer indicates that the properties submitted for consideration are not truly comparable with the Subject Property. The size of the improvements, land components, and physical characteristics vary significantly. A review of the per square foot assessed value is only applicable where properties are substantially similar.
9. The Commission finds that the Taxpayer's alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization review.
10. The Commission further finds that the Taxpayer did not produce sufficient evidence of the market value of the properties submitted for comparison, in order to determine whether the ratio of one or more assessed to market values was less than 100% for tax year 2013. Thus, the Commission is unable to determine whether the Subject Property was assessed at an excessive percentage of market value in comparison to the properties presented for consideration by the Taxpayer.

CONCLUSION

11. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
12. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Dodge County Board of Equalization determining the taxable value of the Subject Property for tax year 2013, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$128,225
<u>Improvements</u>	<u>\$224,775</u>
Total	\$353,000

²⁸ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

3. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2013.
7. This Decision and Order is effective on October 10, 2014.

Signed and Sealed: October 10, 2014

Thomas D. Freimuth, Commissioner